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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

10 CR 553 (SHS)

5 MONDHER BEJAOUI,

6 Defendant.

7 -----x

8 New York, N.Y.
9 September 18, 2013
4:30 p.m.

10 Before:

11 HON. SIDNEY H. STEIN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
Southern District of New York

16 KAN MIN NAWADAY

Assistant United States Attorney

17 JOSHUA L. DRATEL, ESQ.

18 LINDAY LEWIS, ESQ.

Attorneys for Defendant

D9i6bejs

(In open court; case called)

THE DEPUTY CLERK: Counsel please state your names for the record.

MR. NAWADAY: Good afternoon, your Honor. Kan Nawaday for the government. Joining me at the table is Special Agent Michael Birley.

THE COURT: Good afternoon.

MR. DRATEL: Good afternoon, your Honor. Joshua Dratel with Lindsay Lewis from my office for Mr. Bejaoui, who is at the end of the table.

THE COURT: We're here for the sentencing of Mr. Bejaoui. Let me tell you the information that I have. I have the presentence report of the Probation Department prepared on June 18th of this year along with the addenda versus second addendum. The second addenda is approved on August 28th of this year and the sentencing recommendation approved on the same day. In addition, I have two victim impact statements sent to me in a letter dated June 24. I have the submission of Mr. Bejaoui himself dated August 20th. I have the government's sentencing memorandum dated August 30th and I have a submission of Mr. Dratel dated August 23.

Is there any additional information I should have, Mr. Dratel?

MR. DRATEL: I don't think so, your Honor. I think that covers it.

D9i6bejs

1 THE COURT: Mr. Nawaday?

2 MR. NAWADAY: I don't believe so, your Honor, but I
3 would point out that there is a victim present here today, Ms.
4 Black who would like to say some words. I don't know if she
5 has already submitted it to you.

6 THE COURT: There is nothing that I have.

7 Ms. Black, have you submitted anything in writing to
8 the Court?

9 MS. BLACK: Yes.

10 THE COURT: Something you have here now?

11 MS. BLACK: Yes. I have it here.

12 THE COURT: The government's representation is that
13 she is a victim.

14 MR. NAWADAY: Yes, your Honor.

15 THE COURT: Under the Victims' Rights Act you have the
16 ability to speak to the court. If you have want to hand
17 something up, I will take a look at it.

18 Is this what you wanted to say to the Court,
19 Ms. Black?

20 MS. BLACK: Yes.

21 THE COURT: I am going to hand this back to you and I
22 will give you an opportunity to speak to me.

23 MS. BLACK: Okay.

24 THE COURT: So you can keep that. It is a handwritten
25 statement is what it appears to be. There will come a time in

D9i6bejs

1 the proceeding where you will be able to address the Court.

2 Mr. Dratel, have you read and discussed all of this
3 information with your client?

4 MR. DRATEL: Yes, I have, your Honor.

5 THE COURT: Do you have any objections to the findings
6 of fact in the presentence report that you wish to lodge?

7 MR. DRATEL: Yes. We set them forth in my letter on
8 the last page, page 21, paragraph 21 the loss amount.

9 THE COURT: Just a moment. Yes, I see that.

10 MR. DRATEL: That would be it and the corresponding
11 charges in the offense level and the guidelines range.

12 THE COURT: Yes. Stemming from the difference in the
13 loss amount?

14 MR. DRATEL: Yes.

15 THE COURT: I understand.

16 Government, do you have any objections to the findings
17 of fact in the presentence report?

18 MR. NAWADAY: Yes, your Honor. As set forth in our
19 submission, we objected to the noninclusion of a two-level
20 offense level enhancement for obstruction of justice under
21 Section 3C1.1 of the guidelines. Of course we do believe that
22 the loss amount is accurately reflected in the PSR.

23 THE COURT: Where is that obstruction point in your
24 submission?

25 MR. NAWADAY: That comes on pages 4 through 7.

D9i6bejs

1 THE COURT: Thank you. I will return all this
2 information to the Probation Department at the conclusion of
3 the proceeding. I understand the arguments on loss amounts and
4 I understand the argument on the competency -- I mean
5 obstruction of justice according to government of the defendant
6 feigning incompetence.

7 Mr. Dratel, why don't you tell me what it is you wish
8 to tell me.

9 MR. DRATEL: Thank you, your Honor. I am not sure I
10 need to respond to what Ms. Black says, but just in case may I
11 have an opportunity?

12 THE COURT: Yes, sir.

13 MR. DRATEL: Obviously this is a case in which the
14 Court has significant knowledge so I am not going to belabor a
15 lot of what is in the papers unless the Court has specific
16 questions.

17 THE COURT: I have a detailed knowledge of this case
18 and its various twists and turns over the past several years.

19 Go ahead.

20 MR. DRATEL: Yes, your Honor. I think trying to
21 concentrate on the functionality of the sentencing, in other
22 words, looking at whatever guideline level the Court applies --
23 whether it is the government's, whether it is ours, whether it
24 is Probation's -- to me it all leads to the same ultimate
25 result, which is a sense of time served. Even though the

D9i6bejs

1 government's range is higher, the government acknowledges that
2 Mr. Bejaoui should by statute get credit for the two years in
3 state custody. There are two reasons why that it is correct
4 and ought to be the case. There are two reasons why I still
5 think a sentencing of time served is more appropriate and again
6 the functional equivalent.

7 THE COURT: Functional equivalent? The guideline
8 range here according to the Probation Department is 46 to 56
9 months. If you include good time credit for his time
10 incarcerated, he is somewhat over 45 months.

11 MR. DRATEL: Only if you give it at the top of the
12 range. If you give him 46, it should be 39 months, your Honor.

13 THE COURT: No. I said with good time credit.

14 MR. DRATEL: Right. Oh, I am sorry. I understand
15 what you are saying. I understand.

16 THE COURT: In other words, when you add in the
17 approximately 49 days a year, a sentence of time served is
18 essentially 46 months. It may be a week or two shy of 46
19 months or it may be exactly 46 months.

20 MR. DRATEL: Right, your Honor.

21 THE COURT: I am reluctant to say the exact number of
22 days because I am not the Bureau of Prisons.

23 Does the government agree with that calculation, that
24 a sentence of time served is essentially a sentence of 46
25 months or maybe a week or two shy.

D9i6bejs

1 MR. NAWADAY: That is accurate assuming the accurate
2 guidelines is 46 to 57.

3 THE COURT: Yes. Assuming that I adopt the guideline
4 calculation recommended by the Probation Department, correct?

5 MR. NAWADAY: Yes.

6 THE COURT: We're all agreed on that.

7 Go ahead, sir.

8 MR. DRATEL: One of the reasons why in the terms of
9 even if the Court were to adopt the government's version of the
10 guidelines in terms of those numbers or even somewhere within
11 the range that Probation has prescribed, I still think time
12 served is the appropriate sentence for two reasons, one of
13 which is, and this is just from experience, while logic and the
14 statutes and the clear language should result in his being
15 credited with the time in state court, nobody in the Bureau of
16 Prisons is certain until they actually do it. If we were still
17 operating with the Rule 35 that existed for I guess the first
18 seven years when I practiced, which is if there is a problem we
19 can come back within the Court 90 or 120 days and get something
20 corrected, we cannot do that now. This is our chance to get it
21 right. The second part to that is even if he does get the
22 credit, the chances are that he is going to spend some time
23 before Bureau of Prisons makes that calculation. It could be
24 weeks and it could be a couple months before the Bureau of
25 Prisons gets around to doing the calculations applying the

D9i6bejs

1 credit and then saying, Oh, in other words if the Court gives
2 him a sentence of 57 months like the government wants to, by
3 the time the Bureau of Prisons gets around to crediting him the
4 two years, he will have already served more time than he
5 will -- he will be credited with more time.

6 THE COURT: I understand.

7 MR. DRATEL: You understand. So those are the reasons
8 why I think time served as a functional matter really works.
9 Also, if you think where this case is going ultimately in terms
10 of immigration, INS and getting all of that taken care of, I
11 don't see an advantage to anyone, whether it is the system,
12 whether it is the government whether it is even victims in this
13 regard of further imprisonment of Mr. Bejaoui. Under the
14 circumstances and the conditions he is in now that doesn't
15 assist them in terms of any probable restitution issues or
16 anything else. At this point I just don't see any productivity
17 there.

18 THE COURT: I understand the point.

19 Next.

20 MR. DRATEL: With respect to the obstruction part, the
21 cases which are from the Fifth and Eleventh Circuit creates to
22 me a dangerous proposition for counsel, which is that am I to
23 discount or handicap a question of competency that I bring to
24 the Court's attention with the possibility that I am going to
25 take an incompetent defendant further in the case because down

D9i6bejs

1 the road if he is found to be competent, I am going to wind up
2 with two extra points.

3 THE COURT: That is not the test. The test is whether
4 he deliberately feigned incompetence. The question isn't
5 whether he was competent or not. Those two points depend on
6 intentionally feigning incompetence. That is a different
7 issue.

8 MR. DRATEL: I understand, your Honor. Part of it is
9 in terms of we brought it to the Court's attention. He didn't
10 say I want a competency hearing.

11 THE COURT: Presumably an incompetent person would not
12 do that.

13 MR. DRATEL: Yes. By the time I brought it to the
14 Court's attention it was in a different context than where it
15 ultimately got to in the sense that he wasn't in a wheelchair.
16 He has never gotten back to the point where he was when I met
17 him in December of 2010. Not that that was a day at the beach
18 to begin with, but at the same time in some ways he is actually
19 easier to interact with because he is not as agitated as he was
20 in the very beginning. He certainly fully has never recovered.

21 We put in our papers Dr. First's conclusions, even his
22 ultimate decisions, the Court's colloquy with Dr. First about
23 this. The competency issue is a very narrow and precise
24 technical legal question and I think when you merge that with
25 questions of intent underlying someone's emotional state that

D9i6bejs

1 again also sets -- I just don't agree with the premise that --
2 the Court could do that. It certainly is not automatic. I
3 think in this case given a variety of the factors, one of which
4 is that also that -- I know the secondary gain is somewhat
5 layered here, but there really wasn't a lot of secondary gain.
6 He could have taken a plea agreement two years ago and been out
7 of here for two years. There wasn't a lot of things that he
8 did that didn't obstruct. They only obstructed his ability to
9 put this case behind him and his ability to mitigate his losses
10 to a certain extent from this case. If you look at the
11 obstruction in this case, it is not deliberate and calculated
12 in a way an obstruction has to be in order for the two points
13 to be imposed. Again, even if you do impose the two points, it
14 still puts us in the same arithmetic territory that I started
15 out with.

16 THE COURT: I understand the point.

17 MR. DRATEL: I know there had been a lot of behavior
18 in this case obviously and I think regardless of how it looks
19 in the larger picture, I think with respect to the behavior
20 itself, it does stem from a fundamentally non-volitional
21 emotional problem, personality problem, pain problem that
22 Mr. Bejaoui continues to suffer from that really requires
23 treatment and not punishment. So in that sense I would ask the
24 Court to consider that as well.

25 On the loss amount I think the argument is clear and I

D9i6bejs

1 don't think I need to repeat it. I think the Court is fully
2 equipped to make that determination. I don't know that there
3 is anything else that I would cover that hasn't already been
4 covered in sufficient detail in the papers.

5 THE COURT: What is the position of the defense on the
6 imposition of supervised release? Does the defense have a
7 position? Assuming as I think is the case, although it is a
8 little difficult to determine that that is not a case in which
9 supervised release is mandatory, then it may fall under
10 5D1.1(C), supervised release not required by statute and the
11 defendant is deportable.

12 Go head.

13 MR. DRATEL: Right. That was the first thing I was
14 going to raise, your Honor, is the immigration status may make
15 all of that academic to some extent. The second part is like a
16 lot of issues in this case, there is some ambivalence on my
17 part in this sense, and I will lay them out --

18 THE COURT: I understand the ambivalence. That is why
19 I was asking where you ultimately came out if you wanted to
20 give a position.

21 MR. DRATEL: Well, my ultimate position is that I
22 think that given where we have been in this case from the
23 outset of this particular part of it, coming from the beginning
24 of 2011, I think that supervised release is certainly an
25 appropriate substitute for any further custodial sentence. I

D9i6bejs

1 also think that it in some ways it may improve Mr. Bejaoui's
2 chances of getting the kind of social service attention that he
3 left out there on his own, and his wife is not there with him
4 anymore, I am not sure what his resource or capacity are?

5 THE COURT: That is why I am asking the question.

6 MR. DRATEL: I think supervised release is within the
7 full contemplation of issues here. I think it is appropriate
8 given the circumstances of the offender. I am trying to act in
9 his best behalf. I am looking at it in a much more holistic
10 way.

11 THE COURT: Anything else you wish to say?

12 MR. DRATEL: No, your Honor.

13 THE COURT: Mr. Bejaoui, is there anything you wish to
14 say? You have the right under the Federal Rules of Criminal
15 Procedure to address the Court at sentencing. Now is your
16 opportunity if you wish to say anything. You don't have to,
17 but you certainly have the right to do so.

18 THE DEFENDANT: Good afternoon, your Honor.

19 THE COURT: Good afternoon, sir.

20 MR. DRATEL: May I bring a microphone over to him,
21 your Honor?

22 THE COURT: Yes.

23 THE DEFENDANT: Your Honor, you mentioned that you
24 received a -- it was not a letter. It was sort of an objection
25 to the presentence report that I would like the Court to

D9i6bejs

1 acknowledge.

2 THE COURT: I have received a lengthy submission from
3 you dated August 20th and I have read it. Yes, sir.

4 THE DEFENDANT: It is an objection.

5 THE COURT: Yes. You stated various objections.

6 THE DEFENDANT: I also send a copy. I don't know if
7 it in the proper way to send copy to the Probation Office, but
8 I did not receive any response from them.

9 THE COURT: You indicate here in your certificate of
10 service that you served the Probation Department as well as the
11 U.S. Attorney?

12 THE DEFENDANT: Right. And that the objections was in
13 a timely manner since they give me two weeks.

14 THE COURT: I have reviewed it. I have accepted these
15 objections. Go ahead.

16 THE DEFENDANT: Since the Court did acknowledge I
17 wanted to make my objections and the amount of loss knowing
18 that I know the amount of loss is not inaccurate. I don't know
19 if it was done for forensics or stereotype numbers that was put
20 in there by the district executives office, which is the
21 attorney. So that was it.

22 THE COURT: Thank you.

23 THE DEFENDANT: Otherwise to make sure that the Court
24 know that I did have some objection in regard to the amount of
25 loss. The two or six enhancement points that includes the two

D9i6bejs

1 points of special indications and I made clear a point that I
2 did not have the a U.S. education. I did not obtain any U.S.
3 license. All my education was in foreign countries and I did
4 not sought any special license to operate my business.

5 THE COURT: Thank you.

6 THE DEFENDANT: That in terms of presentence report
7 but I want the Court to know that during the sentencing phase,
8 as Mr. Dratel has stated, it has been over three years since
9 this case has been litigated. I appear before your Honor
10 several times.

11 THE COURT: Many times.

12 THE DEFENDANT: Many times. In some cases I might
13 have appeared agitated or aggravated. I am not going to
14 apologize for my behaviors because I think it is related to my
15 manic depressive. I am not going to apologize for being
16 perplexed other days, but I would like to apologize to the
17 Court for putting myself in the position where I would subject
18 myself to criminal prosecution. I did not know my actions 12
19 years that I conducted my business when I was an employee or
20 when I become my own business owner that my actions would
21 elevate to a fraud, intent of fraud.

22 As I stated during my plea, your Honor, that I did not
23 have any interest from of personal gain from the insurance
24 company. I was not a driver. I was approached by drivers and
25 car service owners to submit applications for them. That is in

D9i6bejs

1 regard to the fact of the case. As Mr. Dratel stated I spent
2 two years in the state detention, your Honor, before I came to
3 this district and I was held to two years for crimes that I
4 never commit. I want the Court to consider -- I want the Court
5 to consider some of the facts that were relevant to the case
6 and like what was described that I stole from my clients and
7 matters that were not correct. Thank you.

8 THE COURT: Thank you, sir.

9 Government, is there anything the government would
10 like to say?

11 MR. NAWADAY: First, your Honor, your Honor does have
12 a very intimate grasp of what has occurred at these
13 proceedings. On the obstruction point we do believe what
14 occurred does constitute a deliberate feigning of the
15 competence, which would lead to a two-level enhancement for
16 obstruction.

17 Second, just to focus your Honor on the seriousness of
18 the offense, the victims weren't just insurance companies. In
19 our view the victims included Mr. Bejaoui's tax clients whose
20 identities he used to cover his tracks in the fraud, in
21 perpetuating the fraud.

22 Third, our view is the victims also included certain
23 of the drivers who went to him believing that they were getting
24 valid insurance. Frankly, I am a little shocked that
25 Mr. Bejaoui says that it is actually the driver's fault, that

D9i6bejs

1 they are the ones who made him commit this fraud. That is
2 absolutely not correct. Drivers went to him seeking insurance
3 and he got insurance through fraud. They believed they had
4 valid insurance. I believe that from what I expect your Honor
5 will hear from Ms. Black that led to losses for these drivers.

6 So I understand that regardless of which guidelines
7 range your Honor finds appropriate in this case it is true that
8 in light of the time that Mr. Bejaoui has been incarcerated a
9 sentence of time served would place him within a guideline
10 sentence and we are seeking --

11 THE COURT: Not within the guideline range that the
12 government wants because you add the enhancement points for
13 obstruction.

14 MR. NAWADAY: It actually would still because he gets
15 credit for the two years he was in state custody.

16 THE COURT: I see. Is everyone agreed on that?

17 MR. DRATEL: Yes, your Honor.

18 THE COURT: If you do that, it is within guideline
19 range, correct, either way?

20 MR. NAWADAY: Except if your Honor gave the high end.

21 THE COURT: I understand.

22 MR. NAWADAY: Thank you, your Honor.

23 THE COURT: Ms. Black, you wish to address the Court.
24 Please come forward. You may stand at the microphone and speak
25 clearly. Tell me who you are and the capacity in which you

D9i6bejs

1 wish to address the Court and welcome. Yes, ma'am. You can
2 move the mic near your face.

3 MS. BLACK: Your Honor, thank you for giving me the
4 opportunity to address the Court. My name is Avis Black and I
5 ran a taxi limousine service at 98 Smith Street, Brooklyn, New
6 York from April 2004 to August 2011. Early in the operation of
7 this business, I was solicited by Mondher Bejaoui to place my
8 insurance coverage with his brokerage company. He was situated
9 across the street from my business and I thought that doing
10 business with him might help with the many time constraints a
11 small business encounters.

12 I insured three cars with Mr. Bejaoui's company. When
13 one of the cars had an accident and was totaled I learned that
14 there was no insurance coverage on the cars. It was
15 devastating to me. As everyone knows it is a daunting
16 challenge to run a small business nonetheless having two cars,
17 one being totaled and one totaled taking out of a business,
18 that of course lowered my financial situation and caused me a
19 whole lot of problems. I feel that all this occurred because
20 Mr. Bejaoui deliberately set out to defraud me and any other
21 that did business with him. The most devastating toll on me
22 was a financial hit. On a very conservative front I lost over
23 250,000 over a period of time. Because of my present financial
24 situation, I am asking the Court to consider some financial
25 restitution. Avis Black. Thank you very much.

D9i6bejs

1 THE COURT: Thank you. How did you come up with the
2 conservative estimate of \$250,000?

3 MS. BLACK: Okay. I used -- well, I included the
4 insurance premiums for -- it was very conservative. I didn't
5 use the full period that I lost the cars from the time I
6 closed. I didn't use that. I used just the year -- two and a
7 half years. That is all I used. I used the economic loss,
8 economic loss. In other words two cars were not operating the
9 business for all this period of time and I calculated back.

10 THE COURT: In other words, your figured your loss of
11 business due to the fact that two of your cars could not
12 operate?

13 MS. BLACK: Exactly.

14 THE COURT: Why is it that two of your cars were
15 unable to operate?

16 MS. BLACK: Because one was totaled in an accident and
17 I had no insurance. The other one was towed because there were
18 tickets accumulated on this car that I did not know about and
19 the City of New York towed the car.

20 THE COURT: Did that car have insurance?

21 MS. BLACK: Yes. It was supposed to have insurance.

22 THE COURT: Did it in fact have insurance?

23 MS. BLACK: Yes.

24 THE COURT: I appreciate coming in and speaking to the
25 Court.

D9i6bejs

1 Is the government seeking restitution?

2 MR. NAWADAY: Yes, your Honor. There is restitution
3 for the insurance companies. We still have to determine.

4 THE COURT: You will have 90 days in which to submit
5 restitution figures.

6 MR. NAWADAY: Thank you, your Honor.

7 THE COURT: I hereby adopt the findings of fact in the
8 presentence report. I also am adopting the guideline
9 calculation as set forth by the Probation Department. I am
10 accepting the loss figures as set forth by the Probation
11 Department. I am overruling the defense objection that the
12 loss is overstated. It is clearly the intended loss that
13 matters. The fact that some drivers theoretically may not have
14 purchased the proper insurance because theoretically they may
15 not have been able to afford it is not a proper basis for
16 calculating loss. So I am using the loss figures of the
17 Probation Department. I should say that my sentence would be
18 the same regardless of the loss calculation that I adopted,
19 that is, whether I adopted the defense calculation or the
20 Probation Department calculation.

21 I am not granting the enhancement for obstruction of
22 justice. The obstruction of justice in the context of this
23 case is available only if there has been deliberate feigning of
24 incompetence. The issue of incompetence was hotly contested
25 here. There were psychiatrists' reports on both sides. The

D9i6bejs

1 Court rendered its decision, which it believed at that time and
2 is more convinced over time that the Court was correct does not
3 indicate that the defendant was deliberately feigning
4 incompetence. He is competent. That is what the Court found.
5 That is not the same as a determination that he was
6 deliberately feigning incompetence.

7 Each of the witnesses at the competency hearing agreed
8 that there are emotional and mental issues here outside of the
9 issue of incompetence. I am not granting the enhancement for
10 obstruction of justice and I am denying all the other
11 objections that have been lodged both by Mr. Dratel, by the
12 defendant pro se and if there are any by the government as
13 well.

14 My intended sentence is to sentence this defendant to
15 time served. That is a guideline sentence. Both sides agreed
16 to that fact. I am going to impose one year of supervised
17 release. It is the assumption of the Court that the defendant
18 will be within the custody of the Department of Homeland
19 Security. If that is true, and I am rendering no opinion on
20 that, he does not have to serve his time of supervised release
21 in the United States. I am also going to impose a standard
22 mandatory and special condition set forth by the Probation
23 Department.

24 Before I formally impose sentence, Mr. Dratel, did you
25 wish to lodge any formal objection?

D9i6bejs

MR. DRATEL: No, your Honor.

THE COURT: Government?

MR. NAWADAY: No, your Honor.

THE COURT: I hereby find that the total offense finance level is 23, criminal history category is one, the guideline range under the guidelines as determined by the Probation Department and as adopted by this Court is 46 to 57 months. Pursuant to the Sentencing Reform Act of 1984 it is the judgment of this Court that the defendant Mondher Bejaoui is committed to the custody the Bureau of Prisons for time served. He is sentenced to time served. That is a guideline sentence because it is within the 46- to 57-month range.

Mr. Bejaoui shall be placed on supervised release for a term of one year within the conditions recommended by the Probation Department, namely, the following mandatory conditions: He shall not commit another federal, state or local crime. He shall not illegally possess a controlled substance. He shall not possess a firearm or dangerous weapon or destructive device. He shall refrain from any unlawful use of controlled substance. He shall submit to one drug test within 15 days of his placement on supervised release and at least two unscheduled drug tests thereafter as directed by his Probation officer. He shall cooperate in the collection of DNA as directed by his Probation officer.

He also shall comply with standard conditions 1

D9i6bejs

1 through 13 plus the following special conditions: He shall
2 comply with immigration laws and any directives of the
3 immigration authorities if there is a detainer on him by the
4 Department of Homeland Security. Two, he shall participate in
5 a mental health program approved by the Probation Office. He
6 shall continue to take all prescribed medications unless
7 otherwise instructed by his health care provider. He shall
8 contribute to the cost of services rendered if he has the
9 ability to pay in the form of copayment. I authorize the
10 release of available psychological and psychiatric evaluations
11 to the health care provider. Three, he shall submit his
12 person, residence, place of business, vehicle or any other
13 premises under his control to search on the basis that he has a
14 reasonable belief that contraband or evidence of a violation of
15 any condition of release may be found. That is, if the
16 Probation officer has a reasonable belief to that effect, the
17 search must be conducted at a reasonable time and in a
18 reasonable manner and failure to search -- submit to search may
19 be grounds for revocation. Mr. Bejaoui shall inform all other
20 residence that the premises may be subject to such pursuant to
21 this condition. Mr. Bejaoui shall report to the nearest
22 Probation Office within 72 hours of his release from custody.
23 Indeed, if there is no detainer on him when he is released, he
24 should report within 72 hours to the Probation Office in the
25 Southern District of New York.

D9i6bejs

1 The sentence of time served is on each count, all
2 counts, to run concurrently. The sentence of one-year
3 supervised release is concurrent on all counts as well. I am
4 not imposing a fine because I find Mr. Bejaoui lacks the
5 ability to pay a fine after taking into account the presentence
6 report and the defendant's lack of assets and his limited
7 earning ability as well as his family responsibilities.

8 I am going to adjourn the imposition of restitution
9 for 90 days. Within 75 days of the judgment and commit papers
10 being signed, and I intend to sign them within the next day or
11 two at most, the government should submit to me a proposal on
12 restitution and it can take into account if it deems
13 appropriate Mr. Black's comments. Again, they should submit
14 their proposal to me within 75 days and I will act on it within
15 90 days of the judgment and commitment papers being and
16 entered.

17 I hereby order Mr. Bejaoui to pay to the United States
18 a special assessment of \$500, that is \$100 on each of Counts
19 One, Two, Three and Five and Six.

20 As I have said even if I am incorrect on the loss
21 amount and even if I am incorrect on the obstruction of justice
22 enhancement, my sentence still be the same. I have sentenced
23 the defendant within the guideline range. I have factored all
24 many of the factors 18, United States Code, Section 3553(a). I
25 believe the sentence is appropriate. I believe it is

D9i6bejs

1 reasonable and fair. I believe it is sufficient but not
2 greater than necessary to meet all the ends of the criminal
3 justice system, including the seriousness of the offense and
4 the need for punishment and deterrence.

5 Mr. Dratel, are you aware of any legal reason why the
6 sentence should not be imposed as I have stated it?

7 MR. DRATEL: No, your Honor.

8 THE COURT: Mr. Nawaday?

9 MR. NAWADAY: No, your Honor.

10 THE COURT: I hereby order the sentence to be imposed
11 as I have stated it.

12 Mr. Bejaoui, you have the right to appeal the sentence
13 I have just imposed on you, sir. If you are unable to pay the
14 cost of an appeal, you do have the right to apply for leave to
15 appeal in forma pauperis. If you make a request, the clerk of
16 the Southern District, the clerk of the Southern District will
17 prepare and file a notice of appeal on your behalf immediately
18 and obviously you are able to file a notice of appeal yourself
19 if you so desired to appeal.

20 Do you understand your appeal rights, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: The government, I take it there are no
23 open counts?

24 MR. NAWADAY: That's correct.

25 THE COURT: Is the government aware of whether or not

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1 there is a detainer that has been lodged? The presentence
2 report says no.

3 MR. NAWADAY: I am not aware of one being lodged.

4 THE COURT: Mr. Bejaoui, I sentenced you to time
5 served. In other words, if there is no detainer from the
6 Department of Homeland Security on you, you will be processed
7 by the marshals and you will be released. If that happens you
8 should report to the Probation Department, the Southern
9 District of Probation Department, within 72 hours of my signing
10 the judgment and commitment papers here. I urge you, sir, to
11 lead a law-abiding life. You have been through a very long and
12 extensive process here that involved a great deal of time by
13 yourself, your lawyers and the number of documents. That
14 process is at an end. I have sentenced you appropriately
15 within the guideline range and from a standpoint of this Court,
16 you are free now to go about your business and you must comply
17 with all of the conditions of supervised release. The
18 Probation Department will set those forth for you. You can't
19 have a firearm, you can't take drugs, you cannot affiliate with
20 federal felons, and there are a whole series of conditions that
21 you have to comply with, and you cannot commit any other crime.
22 If there is a detainer on you from the Department of Homeland
23 Security that is a separate proceeding and you will have to
24 deal with that and that is an issue of your residence in the
25 United States.

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1 All I can say, sir, is I wish you good luck. Please
2 remain law-abiding. I hope I don't see you again. By that I
3 mean I hope you don't run afoul of the criminal justice system
4 again. Good luck to you, sir.

5 Mr. Dratel and Ms. Lewis, you have the appreciation of
6 the Court. It has been a very long and difficult
7 representation and the Court does appreciate your services as
8 well as the service of all Criminal Justice Act attorneys.
9 This was a difficult case to litigate from the standpoint of
10 the government and defense and it has now reached an
11 appropriate conclusion. The Court thanks everybody for their
12 participation.

13 MR. DRATEL: Thank you, your Honor.

14 MR. NAWADAY: Thank you, your Honor.

15 THE DEPUTY CLERK: All rise.

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